different. An absolute increase of a few cents on a local call represents a substantial percentage change in price, which inevitably will influence demand In contrast, a few extra cents on a long-distance call -- which has a much higher value and price -- will have a much lesser effect.[17] All rational actors in a fully competitive market would price phone usage for local coin and toll calls differently. SPR Report at 34. Because the market would price local coin and toll calls differently -- and because doing so is efficient -- the Commission should price them differently as well. See id. at 33, 34.

4. The Commission Should Establish a Flexible, Forward-Looking Compensation Scheme.

In addition to addressing the foregoing issues, the Commission also must address the definition of a "call." Currently, customers using access code and certain subscriber 800 services can make multiple calls without hanging up. Instead, at the end of each conversation, they regenerate the dialtone by pressing the "#" button. In the Coalition's view, a second call using regenerated dialtone is every bit as much a "call" as the first (and no different than hanging up and dialing over). The end-user customer views them as multiple calls, since different people or destinations are called. The carrier views them as multiple calls as well, since it benefits from -- and bills for -- multiple revenue-generating calls. Consequently, any use of the payphone that generates a separate charge or billing event -- effectively, a new line or entry on the bill of the customer -- should count as a separate "call" for purposes of compensation. Certainly the plain language of the statute supports this approach. Even though the dialtone is regenerated, there is

[17]In addition, demand for local payphone service is more elastic than demand for business or residential service because the decision on whether or not to make the call often depends on whether the customer has sufficient coins, or the right coins, in pocket. In contrast, almost all long-distance payphone calls are alternatively billed, making the question of whether the caller has coins on hand irrelevant.

undeniably another "call," it is "completed," and it uses the payphone. Common sense supports it as well. Under a contrary rule, one person could stay on the phone all day, using a regenerated dialtone to make toll calls, but the PSP would receive compensation only for a single call.

The problem of regenerated dial-tone, however, reveals a larger problem with using a one-charge per-call system. Under this approach, the end-user can tie up a line for a lengthy period even on a single call. This generates great revenue for the OSP but brings the PSP just a single per-call charge. This is hardly "fair compensation." Moreover, in the absence of a shift away from the flat-rate per-call charge, changing usage patterns will soon undermine the Commission's charge rate entirely. As public phones are increasingly used for data transmission (such as the use of airport phones by travelers with laptops) call durations will rise, and the number of calls per phone will fall -- ultimately forcing the Commission either to raise per-call compensation rates or change the system altogether.

To avoid such problems and ensure that "fair" compensation is paid for "each and every call," the industry must move toward a more equitable and sustainable method of measuring the appropriate compensation. See NPRM ¶ 38 (asking for changes to be implemented in the future). In the Coalition's view, moving from a flat rate per call to a duration-based charge per call is more consistent with the concept of fair compensation than a flat per-call charge. The duration of a call has two economic impacts. First, toll service providers receive increased economic benefit as time-rated calls increase in duration. Second, payphone service providers suffer an increasing number of lost opportunities for additional revenue-producing calls the longer a consumer utilizes the set.[18] Per-call compensation based on minutes of use takes these factors

[18] Location providers often require PSPs to install additional payphones in locations where long duration calls take place during peak periods

into consideration, while other methods of measuring compensation (like a flat per-call rate) do not.

Consequently, the Commission should require carriers to enhance their tracking systems to measure call duration ("minutes of use") and require a shift to duration-sensitive compensation as soon as it is technologically feasible to do so. At the very least, the Commission should not preclude negotiated per call compensation arrangements that turn on the duration of the call. Indeed, such arrangements exist today, for example, where commissions on 0+ calls are negotiated and paid on the basis of a percentage of the value of each call (which is a function of distance, time of day, and duration).[19]

5. The Commission Should Not Provide Independent PSPs with Interim Compensation to be Paid Pending the Effective Date of the Final Rules.

The Commission seeks comments on whether it should provide independent PSPs some sort of interim compensation to be paid until the effective date of the final rules adopted in this proceeding. NPRM ¶ 39. The Coalition believes that such interim compensation would be unwise, unadministrable, and illegal. Such compensation would constitute a windfall to one particular group of industry players and therefore would unbalance the playing field. That would be contrary to the statutory requirement that the Commission "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. § 276(b)(1)(A). The statute makes no provision for some subset of PSPs to get interim compensation; indeed, it makes

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[19]AT&T had to seek a waiver of the Commission's rules in order to provide per-call compensation to non-RBOC PSPs. Even if the Commission establishes a flat rate per call, the Commission should permit negotiated compensation based on minutes of use without the need for any waivers.

no provision at all for interim compensation. The statute simply directs the Commission to establish rules for the industry as a whole within nine months.

Given the shortness of the time in question, an interim compensation plan would also cause administrative problems for the carriers who would have to implement it. They will be busy enough establishing the tracking and administrative mechanisms required by the Commission's final rules, without at the same time trying to implement a different, interim scheme. Finally, the Commission certainly has no legal basis for making any interim compensation retroactively effective as of the release date of the NPRM. See NPRM ¶ 40. It is well-established that retroactive rate adjustments are unlawful. See, e.g., Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 578 n.8 (1981); Arizona Grocery Co. v. Atchinson, Topeka & Santa Fe Ry., 284 U.S. 370, 390 (1932); TRT Telecommunications Corp. v. FCC, 857 F.2d 1535, 1547 (D.C. Cir. 1988).

E. Per-Call Compensation on Local Coin Calls. [NPRM ¶¶ 21-23]

The Coalition believes that the market, not regulation, should determine the local coin rate.[20] Indeed, as noted earlier, the Commission has itself recognized that prices set by a competitive market benefit the general public and are by definition fair prices. See p. 9, supra. Just as the Coalition advocates market-based pricing on other per-call compensation amounts, it sees no reason to depart from that approach when establishing the local coin rate.

There can be little dispute that the coin payphone market is already structured to operate competitively but for the existence of regulatory constraints. Because there are few, if any, barriers to entry and many experienced market players, no one market participant can charge

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[20]For reasons stated in separate comments, Bell Atlantic does not believe that Congress intended to give the Commission authority over rates for local coin services. However, should the FCC determine that it does, indeed, have such jurisdiction, Bell Atlantic endorses the approach discussed below.

excessive prices for an extended period of time; supra-competitive pricing will quickly prompt new entry and cause those pricing above the market either to reduce prices or be forced from the market due to loss of business. See SPR Report at 8-16. Moreover, the market is rapidly deconcentrating. While the RBOCs started with a large installed base at divestiture, nearly thirty percent of all public payphones in RBOC regions today are owned and operated by competitors, not the RBOCs, and there is significantly higher competitor penetration in some regions. See id., Table 2. And the trend continues. In many regions, fifty percent of new competitive installations are non-RBOC payphones. Significantly, some states have already deregulated the local coin rate in recognition of the competitive nature of the local coin market.[21]

BellSouth, Southwestern Bell, and U S WEST believe that the Commission should follow the lead of those states that have deregulated the local coin rate by immediately deregulating the rate of local coin calls. They have filed separate comments detailing the reasons why they believe the local coin rate should, like all other aspects of payphone service, be market-driven. While the other Coalition members agree with the end result of BellSouth, Southwestern Bell, and U S WEST's approach, they believe the Commission should take a transitional approach to a market-based local coin rate in states that have not deregulated.

As the Commission points out in the NPRM, the states traditionally have set local coin rates. Current rates do not necessarily reflect market forces and, indeed, are often insulated from those forces. Given these circumstances, the other Coalition members feel the Commission should not move immediately from local coin rates that may be currently subsidized by RBOC operations to non-subsidized market-based rates, especially since market forces have been

[21]The Coalition believes that Commission action is not required in those states that have already deregulated the local coin rate since, consistent with the views articulated above, the competitive market is already permitted to determine what the rate should be in those states and PSPs operating there are thus assured of receiving fair compensation on local coin calls.

constrained by regulation in most states. Nevertheless, since the 1996 Act "requires the Commission to ensure that the payphone provider receives fair compensation for each interstate and intrastate call, including local coin sent-paid calls," NPRM ¶ 20, and since, as the Commission acknowledges in the NPRM, "[c]urrent local rates may not always 'fairly' compensate the PSP for use of its payphone," NPRM ¶ 22, n.64, some Commission action will be required now to ensure a smooth transition to a market-based local coin rate in most states.

These Coalition members feel that the Commission should prescribe standards by which states that need to address the local coin rate must abide when establishing a local coin rate that ensures that all PSPs are fairly compensated.[22] Such standards must, at a minimum, reflect and effectuate the salient requirements of Section 276 of the 1996 Act. They should provide sufficient guidance to the states so as to enable them to establish a fully compensatory local coin rate without the need for protracted rate proceedings. The standards should be truly transitional, to sunset after two years, at which time the local call rate would be completely deregulated.[23]

To that end, these Coalition members propose that the Commission require the states to determine rates according to Commission standards within 90 days of the effective date of the regulations. While the Commission's standards will ultimately require the states to determine the local coin rate, they should establish a definition of "fair compensation" to ensure that, whatever the rate, it will: (i) cover the cost of providing local coin calls; (ii) provide the PSP with a

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[22]While U S WEST endorses the standards discussed below, it advocates in its own comments a modification to the procedure recommended in these comments. That procedural modification would, if adopted, obviate the need for review of the existing local coin rate in some states.

[23]NYNEX believes that the Commission should, on its own initiative and within two years of the effective date of its rules, commence a proceeding pursuant to Section 10 of the Communications Act (47 U.S.C. § 160) for the purpose of determining the extent to which it will exercise its forbearance authority in connection with the local coin rate.

reasonable profit; and (iii) provide equity among all PSPs. To effectuate the Act's requirement that PSPs receive fair compensation for "each and every completed intrastate and interstate call," the Commission's standards must, at a minimum, provide that the local coin rate be determined independent of revenues from any other service as well as any other source of per call compensation (such as that received on toll services). The standards should also include a mechanism by which PSPs can petition the Commission for relief in the event that a state does not establish a fully compensatory local coin rate and/or fails to act within the prescribed period of time.

II. THE COMMISSION SHOULD RECLASSIFY LEC PAYPHONE ASSETS AS CPE IN A MANNER CONSISTENT WITH COMMISSION PRECEDENT

The Commission must also deregulate and detariff LEC payphone assets. Only when those assets are reclassified to unregulated status or, at the LECs' option, to an unregulated separate subsidiary, will it be possible for market forces rather than regulators to set prices. Such asset reclassifications, however, raise a number of issues that the Commission has identified in its NPRM. We address each of those issues in turn. At the outset, however, we stress that, on this issue as on others, the Commission should make it clear that "any State requirements . . . inconsistent with the Commission's regulations [are] preempt[ed]." 47 U.S.C. § 276(c).

A. Payphones Should Be Classified as CPE [NPRM ¶¶ 42-48]

The Coalition entirely agrees with the Commission's tentative conclusion that all LEC payphones should be reclassified as CPE. NPRM ¶ 42. The Coalition further agrees that incumbent LECs should be required to provide to all PSPs, on a nondiscriminatory tariffed basis, the network functionalities used in a LEC's delivery of payphone services. Id.

Equal Access to Network Services. In Computer III, the Commission required the RBOCs to offer competing service providers access to basic network services of the same type and quality that the RBOCs themselves use in the provision of their own enhanced services.[24] This same rule should apply to RBOC interactions with affiliated or integrated PSPs. The Coalition therefore believes that RBOCs should be required to provide to PSPs, on a nondiscriminatory basis, all network functionalities used in the RBOC's delivery of payphone services.[25]

Specifically, RBOCs should offer two basic types of lines for use with payphones -- the standard coin line and the alternate access line as defined in the LSSGR.[26] The standard coin line consists of dial tone, originating and terminating line screening and blocking features (to prevent fraud), and coin collect and return functionality This line is used primarily by so-called "dumb" payphone terminals, which use network intelligence to control coin collection and return features. The alternate access line is like the standard coin line, except that it does not include coin collect and return functionality. This line is used primarily with so-called "smart" payphones, which themselves contain the circuitry needed to handle coin functions. See 47 C.F.R. § 68.3.

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[24]Report and Order, Computer III Remand Proceedings; Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards, 6 FCC Rcd 7571, 7598, ¶ 59 (1991) (hereinafter Bell Operating Company Safeguards).

[25]Those services should be offered under tariff on the same terms and conditions to all PSPs. This, however, should not be read as precluding the possibility of volume discounts to high-volume customers -- provided that such discounts are made available to affiliated and unaffiliated PSPs alike. The Commission has recognized that publicly available volume discounts do not run afoul of the prohibition on discrimination. See, e.g., 47 C.F.R. § 76.1002(b)(3) and note (notwithstanding prohibition on discriminatory prices, terms, and conditions in the 1992 Cable Act's program access provisions, volume discounts permitted). Moreover, they can be affirmatively beneficial to the public interest and consumer welfare. In a competitive environment, PSPs would be permitted to benefit from cost savings and economies of scale directly attributable to their size -- passing those savings on to consumers. There is no reason why the same dynamic and the same savings for consumers should be barred during the transition to a fully competitive environment.

[26]The LSSGR (LATA Switching Systems Generic Requirements) is Bellcore document TR-TSY-000-64. Section TR-TSY-000-528 of that document addresses both standard and alternate coin lines.

The Coalition agrees with the Commission that both types of lines should be offered on a non-discriminatory basis to RBOC PSPs and independent PSPs alike. See NPRM ¶ 43. They further suggest that the Commission require these types of lines to be available within 12 months of the effective date of the Commission's regulations. This will permit all PSPs to use the most efficient configuration possible, relying on network or payphone intelligence as appropriate. This will offer PSPs all necessary functionalities. Moreover, because these are the same classes of service used by the RBOCs themselves, there is no chance that discrimination will result.

Unbundling. The Coalition believes that unbundling services at the line level -- offering a class of service for smart phones and one for dumb sets -- is sufficient to ensure fair competition in the marketplace. Very few independent PSPs have even purchased unbundled coin lines. SPR Report, Table 2. The RBOCs may decide to offer additional services, such as installation and maintenance, joint marketing, per-call tracking, or call validation, NPRM ¶ 48, as market circumstances warrant. But independent PSPs do not require these services to compete with RBOC payphones and RBOCs should not be required to offer them. The RBOCs will, however, consider other unbundling requests under the standards articulated in Computer III.[27]

The Coalition does not agree that RBOC provision of coin transmission services on an unbundled basis generally should be treated as a "new service" under the Commission's rules, see NPRM ¶ 46. These are exchange services and are subject to state rather than federal jurisdiction. Consequently, the states will require the filing of tariffs and cost support data sufficient to protect

[27]Report and Order, Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 104 F.C.C.2d 958, 1065, ¶ 217 (1986) (decision to unbundle should be based on "the expected market demand for such elements, their utility as perceived by . . . competitors, and the technical and costing feasibility of such unbundling."), vacated on other grounds, California v. FCC, 905 F.2d 1217 (9th Cir. 1990), on remand, 6 FCC Rcd 7571 (1991).

against predation and other concerns. There is no reason for the FCC to duplicate these state efforts. Moreover, because these services must be tariffed and RBOC PSPs must purchase or impute them at the same price, there is no incentive to price unfairly.

Part 68 Registration. The Coalition also agrees with the Commission's conclusion that its Part 68.2(a)(1) rules should be amended to facilitate registration of both "smart" and "dumb" payphones.[28] The Coalition members, however, already have an installed base of hundreds of thousands of payphones. Retrofitting or upgrading these payphones to meet new Commission regulations would be both expensive and burdensome. Moreover, many of the "dumb" payphones are among the RBOCs' least profitable; mandating an expensive upgrade would likely lead the RBOC to instead remove the payphone from service. This result is flatly inconsistent with the Act's aim of promoting the widespread deployment of payphones. Accordingly, the Coalition suggests that existing payphones be permanently grandfathered from the Commission's revised Part 68 rules. This is consistent with the Commission's prior practice in exempting existing CPE from registration requirements. See 47 C.F.R. § 68.2(b)-(h) (listing types of terminal equipment that "may remain connected for life, unless subsequently modified" in significant ways). Any new sets would have to meet the Part 68 rules. Refurbished sets would have to be registered only if their basic functionality were changed.

Demarcation Point. Finally, the Coalition believes that the Commission is correct that the demarcation point for new RBOC payphones should be consistent with the minimum point of entry ("MPOE") standard for other wireline services. See 47 C.F.R. § 68.3; NPRM ¶ 47.

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[28]The Commission also should take into account any network reliability concerns that might arise from PSPs' new-found ability to connect "dumb" payphones to the network. See NPRM ¶ 45. This should be done by revising its Section 68.3 rules to include specifications for central office-implemented payphones. Satisfaction of these new standards should be a prerequisite to a PSP's ability to register a "dumb" payphone.

Eventually, this MPOE should be demarcated by a network interface. For existing "smart" payphones that meet the requirements of Section 68.3, however, the Commission should not require the installation of a network interface. Instead, the demarcation point should be set at the point currently used for independent PSPs. Existing payphones should be grandfathered based on a theoretical or "virtual" interface at the protector of the station. The MPOE standard, or network demarcation point rules, should be applied flexibly, allowing for the physical circumstances of the payphone location and for negotiation of the demarcation point with the location provider.

B. Payphone Assets Should Be Identified and Valued Consistent with Commission Precedent. [NPRM ¶ 49]

1. Valuation Should Be at Net Book Value.

The most important question is how to determine the value of the assets to be reclassified. The Commission has time and again dealt with this precise issue. Time and again it has reclassified CPE based on net book value. When it deregulated and detariffed CPE, the Commission determined that the "net book value of embedded CPE should be used as a surrogate for economic value for purposes of establishing sales prices and valuing the equipment to be transferred."[29] More recently, when it deregulated payphone assets located in inmate facilities, the Commission again adopted a net book valuation.[30]

It would be difficult, time-consuming, and expensive to determine the fair market value of the RBOCs' embedded payphone assets by appraising all those assets and using that appraised value for the purposes of reclassifying the assets.[31] Any such approach would entail substantial "delay, uncertainty, and costs to be assessed to ratepayers," with "no assurance that appraisals would yield any precise results regarding economic value." Report and Order, 3 FCC Rcd at 483, ¶ 46. Accordingly, net book value is still the best available "surrogate for economic value for purposes of establishing sales prices and valuing the equipment to be transferred." Id. at 483, ¶ 45. This has been the Commission's consistent approach. Id.

Given these clear precedents, the Coalition does not understand the Commission's proposal to impose an interest charge on reclassified assets. See NPRM ¶ 49 & nn.146-47. Such a charge is appropriate, and has been applied, only in situations where an RBOC improperly allocates

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[29]Although CPE is transferred at net book value, assets such as land and buildings are transferred at appraised value. See Report and Order, Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry) 95 F.C.C.2d 1276, 1306, ¶ 46 (1983). See also id. at 1292, ¶ 21(13) (1983) (1983 CPE detariffing order requires "land and buildings to be transferred . . . at appraised value, while other supporting assets must be transferred at net book value."); Memorandum Opinion and Order, Capitalization Plans for the Furnishing of CPE and Enhanced Services, 102 F.C.C. 2d 1089, 1102, ¶ 25 & n.19 (1985) ("[N]et book value adequately approximated the economic value of the embedded base of CPE [but because] net book value of real estate often does not approximate economic value, land and buildings would have to be transferred at fair market value." (citation omitted)).

[30]See Declaratory Ruling, Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, RM Dkt. No. 8181, at 13, ¶ 27 (rel. Feb. 20, 1996).

[31]Report and Order, Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry), 3 FCC Rcd 477, 483, ¶ 46 (1988).

costs to regulated activities based on forecasting errors and is later required to reallocate them. See Report and Order, Separation of Costs of Regulated Telphone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298, 1320, ¶ 171 (1987) ("Joint Cost Order") (interest charge meant to deter misallocations and compensate ratepayers for misallocations); see also Order on Reconsideration, Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 6283, ¶ 67 (1987) (same). The Commission has never applied it where, as here, there was no misallocation in the first instance, and reallocation instead is part of an industry restructuring conducted at congressional and Commission command.[32]

The Commission has always relied simply on net book valuation, without any additional interest charge, when handling CPE assets indistinguishable from those at issue here. There is no good reason to depart from that settled approach

2. The Commission Should Require Valuation Only of Physical Assets Reflected on RBOC Books

Almost as important as establishing a method for valuation is circumscribing the universe of relevant assets to be valued. Here, again, history should be the Commission's guide. The assets to be reclassified from regulated to deregulated activities should include all assets dedicated to the provision of payphone service, such as payphones, enclosures, pedestals, coin counting machines, vehicles, land and buildings used solely for payphone services, and other

[32]Neither of the rationales for the interest charge apply here. Because there was no misallocation in the first instance, there is nothing here to deter. Nor is there a need to compensate ratepayers. At no point were ratepayers picking up the tab for something that should have been allocated to the unregulated side. Instead, ratepayers have contributed an appropriate amount at all times. It is just that, on a forward-looking basis, Congress and the Commission have simply chosen to reclassify payphone assets as part of regulatory restructuring. Andersen Report at 16-17.

similar assets.[33] A similar approach was adopted in the inmate-only payphone proceeding.[34] There is no reason for different treatment here. Andersen Report at 19-20.[35]

3. Reclassification Should Be Completed Within 12 Months of the Effective Date of the Commission's Order.

In its Computer Inquiry III, the Commission phased CPE out of the separations process over five years in order to avoid the "rate shock" that might occur from a one-time asset transfer.[36] But as the Commission tentatively concludes in its NPRM, a phase-out approach is unnecessary in this proceeding because "payphone terminal equipment consists of less than one percent of total plant investment for the entire LEC industry." NPRM ¶ 49. Moreover, a phase-out approach would be extremely difficult for RBOCs to implement. Thus, the Coalition proposes that the Commission require that all asset transfers be completed within 12 months of the effective date of the regulations.

C. Replacement of the Interstate and Intrastate Access Charge Payphone and Service Elements. [NPRM ¶¶ 50-54]

Section 276(b)(1)(B) of the Act directs the Commission to discontinue the current system of interstate and intrastate payments for payphone service elements and to remove all interstate and intrastate subsidies from basic exchange and exchange access revenues. The Coalition agrees that the removal of payphone costs from interstate access charges will be accomplished through

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[33] All RBOC payphones, including current public interest and semi-public payphones, should be detariffed and reclassified. See 47 U.S.C. § 276(d) (defining "payphone service" to include, inter alia, "the provision of public or semi-public pay telephones").

[34] See Declaratory Ruling, Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, RM Dkt. No. 8181, at 13, ¶ 27.

[35] As a necessary corollary, asset reclassification should not include "assets" that are not now, and never have been, included in the RBOCs' regulated accounts.

[36] See Decision and Order, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 89 F.C.C.2d 1, 17-23, ¶¶ 28-39 (1982).

an exogenous cost adjustment to the Common Line price cap basket price cap index pursuant to Section 61.45(d) of the Commission's rules. See NPRM ¶ 51.

In the Coalition's view, the question is not whether the Common Line PCI should be adjusted but when. Logically, this adjustment should take place at the same time per call compensation or some surrogate begins being paid. See id. Making the exogenous cost adjustments before per call compensation is paid would trigger significant losses for the LECs, while paying subsidies and per call compensation simultaneously would produce a windfall. In the Coalition's view, the best mechanism would be to require LECs to remove the payphone costs no later than 12 months after the effective date of the new regulations. Until the payphone costs are removed, no per call compensation can be paid. And if the payphone costs are removed before tracking is in place, the Commission should require payment of monthly, interim compensation equal to that paid to non-LEC PSPs until such time as tracking is implemented.

The Commission also has asked LECs to identify "all accounts that contain costs attributable to their payphone operations." Id. Regulated payphone service costs and service elements -- including the costs of the payphone sets and certain overheads -- are found among several accounts, which are listed in the filing of the United States Telephone Association, at 8. The cost of the payphone loops will continue to be regulated and will be reallocated to the base factor portion of the Common Line basket.

The Commission should allow the states to formulate their own mechanisms for removing intrastate subsidies (to the extent they exist). See NPRM ¶ 52. But in order to ensure that these intrastate subsidies are removed expeditiously, the Commission should require the states to develop their mechanisms (if any are necessary) before tracking becomes mandatory.[37]

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[37]Where applicable, intrastate end user line charges should also be adjusted to ensure parity between RBOC and non-RBOC PSPs.

Finally, the Commission is correct to conclude that equal-treatment should be the hallmark of the Subscriber Line Charge ("SLC"). See NPRM ¶ 53. Just as independent PSPs pay the SLC, so too should LEC PSPs. The Commission's proposal that the $6.00 SLC cap be raised where the interstate costs of the lines exceed the $6.00 cap -- without reference to whether the PSP is LEC-affiliated or independent -- presents a more vexing question. In the Coalition's view, there is no reason to differentiate SLCs between payphone loops and other business loops since, to the extent there is a subsidy in a lower SLC, the subsidy is uniform for all loops, not just payphone loops.

D. Deregulation of AT&T Payphones. [NPRM ¶¶ 55-56]

The Coalition agrees with the Commission that AT&T payphones should be deregulated and that whatever rules apply to RBOC payphones should apply to AT&T payphones as well. See NPRM ¶ 56. As the Commission notes, AT&T payphones have long have been treated the same as RBOC payphones, and the Coalition believes that the Commission should continue this regulatory parity.

III. NONSTRUCTURAL SAFEGUARDS EQUIVALENT TO THOSE PROVIDED IN COMPUTER III ARE SUFFICIENT FOR PAYPHONE DEREGULATION [NPRM ¶¶ 57-66]

Section 276(b)(1)(C) directs the Commission to "prescribe a set of nonstructural safeguards for Bell operating company payphone service" to ensure that the RBOCs neither subsidize payphone service from exchange service and access operations nor discriminate in favor of affiliated PSPs. These safeguards, Congress has commanded, "shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Dkt. No. 90-623) proceeding." 47 U.S.C. § 276(b)(1)(C).

The Coalition agrees with the Commission's tentative conclusion that the safeguards established in Computer Inquiry III,[38] as well as those in the related BOC CPE Relief Order, should be applied to the provision of payphone services by RBOCs. See NPRM ¶ 58. The Coalition further believes that these safeguards are more than sufficient to protect competition in the payphone market. No other nonstructural safeguards are required. The Computer III/BOC CPE Relief rules bar discrimination by requiring equal access to network features and functionalities and imposing network information disclosure rules. They prevent LECs from obtaining an unfair advantage from Customer Proprietary Network Information ("CPNI") by limiting access to and uses of that information. And they preclude anticompetitive cross-subsidies by imposing additional accounting safeguards. See Andersen Report at 13-16. All these rules have proven themselves effective in actual application by withstanding the test of time. Id.

That Computer III's rules would provide an adequate framework for payphone regulation should hardly come as a surprise. The issues confronting the Commission under Section 276(b)(1)(C) and those that confronted the Commission in Computer III and its CPE Orders are one and the same. Payphones are not sui generis but rather a specialized type of CPE. There is no reason in logic, market structure, or technology why payphone services would be any more susceptible to discrimination or cross-subsidy than the competitive services successfully protected and promoted for years under Computer III.

CEI Plans. The Coalition agrees with the Commission's tentative conclusion that the RBOCs must provide competitors with service of the same type and quality that the RBOC PSPs

[38] See Report and Order, 104 F.C.C.2d at 1080-86. ¶¶ 245-255.

themselves use. Moreover, it agrees that the RBOCs should offer "equal and efficient access to" those same basic services.[39]

The Commission, however, goes one step further and proposes to require the filing of CEI plans. NPRM ¶¶ 60-62. This makes no sense. Payphones are CPE, and they utilize basic network services, not enhanced services. And, as the Commission itself explains, NPRM ¶ 59, the RBOCs already file service-specific CEI plans for their enhanced service offerings. To the extent these services are offered over payphones, therefore, the RBOCs already have CEI plans. And to the extent that the RBOCs will be unbundling their basic payphone services, a CEI plan would be both unnecessary and unprecedented.

The Commission's further suggestion that the RBOCs comply with Computer III's and ONA's reporting requirements -- including annual attestations of non-discrimination and regular maintenance reports, NPRM ¶ 64 -- is unobjectionable. But the Coalition notes that some of its members have argued, in CC Docket No. 96-23, that some of the reporting requirements of Computer III are unnecessary and therefore should be eliminated. Because the issues confronting the Commission in both proceedings are essentially identical, the Coalition believes that whichever rule prevails in that proceeding should govern payphones here.

CPNI. The Coalition agrees with the Commission that, because the Commission is reviewing its CPNI rules in another proceeding, the results of that proceeding should control here. See NPRM ¶ 63. But the Coalition believes it is important to make two points. First, the Commission's current rules -- announced by the Commission in the BOC CPE Relief Order[40] and

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[39]Memorandum Opinion and Order, Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 2449, 2453, ¶ 30 (1988).

[40]Report and Order, Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, 2 FCC Rcd 143, 151-153 ¶¶ 50-70 (1987), on recon., 3 FCC Rcd 22, 24 (1987), aff'd, Illinois Bell Telephone Co. v. FCC, 883

the Bell Operating Company Safeguards decisions.[41] -- and the obligations imposed by Congress in the new Act[42] generally bar RBOCs from disclosing to third parties or making use of customer proprietary network information contrary to a customer's wishes. This ensures that RBOCs cannot disclose or use the CPNI of customers such as independent PSPs (absent the independent PSP's approval). Second, these rules by their terms do not apply to intra-RBOC transfers of information obtained from the RBOC's own payphone operations. If the RBOC chooses to establish its payphone operations as a separate subsidiary, that subsidiary is the customer of record and therefore may authorize the RBOC to use its CPNI. Even if the RBOC chooses to operate its payphones on an integrated basis, the RBOC PSP will still be the subscriber of record, paying (or imputing) the tariffed rate for network services Indeed, if there is no customer, then there can be no customer proprietary information.[43] Consequently, while the CPNI rules should be applied to preclude unfair use of CPNI from competing PSPs, nothing in them should bar RBOCs from making use of information gleaned from their own payphone operations. RBOC

F.2d 104 (D.C. Cir. 1989).

[41]Bell Operating Company Safeguards, 6 FCC Rcd at 7605-14, ¶¶ 75-89.

[42]See 47 U.S.C. § 222(c)(1) ("Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of . . . the telecommunications service from which such information is derived.")

[43]CPNI is defined as information "that relates to the quantity . . . and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier." Section 702(f)(1) (emphasis added).

PSPs and non-RBOC PSPs should be on an equal footing in their ability to use (and maintain the confidentiality of) their competitive information.[44]

Network Information Disclosure. The Coalition agrees with the Commission's tentative conclusion that the RBOCs should abide by its network information disclosure requirements. NPRM ¶ 64. First, an RBOC must disclose information at the "make/buy" point -- that is, when it decides to make for itself or buy from an unaffiliated entity, any product whose design affects or relies on the network interface.[45] Second, an RBOC must disclose technical information about a new service 12 months before it is introduced. If the RBOC can introduce the service within 12 months of the make/buy point, it must make a public disclosure at the make/buy point. In no event, however, may disclosure occur less than six months before the introduction of the new service.[46]

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[44]In its Comments in CC Dkt. No. 96-115, the American Public Communications Council ("APCC Comments," filed June 11, 1996) has suggested that, because there is no "customer" for RBOC payphones, information about such payphones, such as traffic volumes, is "aggregate" CPNI that must be made available to non-RBOC PSPs on the same basis that it is available for the RBOC PSP's own use. APCC Comments at 3. This is wrong for at least three reasons. First, for the reasons given, the PSP is the "customer" of the LEC whether or not that PSP is affiliated with the LEC. Second, and in any event, if there were no "customer," as APCC suggests, then there could be no "aggregate customer information," and the rules of Section 222(c) would not apply at all. Third, and finally, aggregate CPNI, like individual CPNI, may be used in providing "the telecommunications service from which such information is derived" without any sharing obligation. 47 U.S.C. § 222(c)(1), (c)(3). Thus, RBOC PSPs who want to study the traffic volumes on their payphones have no obligation to make such critical and highly sensitive competitive information available to their competitors.

[45]Report and Order, Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 2 FCC Rcd 3072, 3087-88, ¶¶ 110-116 (1988). The network information subject to disclosure includes only network changes or new basic services that affect the interconnection of enhanced services with the network. Id. at 3097, ¶ 174. These network disclosure rules parallel those for CPE.

[46]Memorandum Opinion and Order on Reconsideration, Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 3 FCC Rcd 1150, 1164-65, ¶ 116 (1988).

These network disclosure rules will prove more than sufficient when applied to the payphone industry. Just as these rules "provide the enhanced services industry with critical network information in a timely fashion" -- thereby serving "as an effective safeguard against discrimination," 6 FCC Rcd at 7603, ¶ 70, -- so too will they provide information and preclude discrimination in the payphone industry as well. It is therefore unnecessary for the Commission to augment these protections with the network information disclosure requirements it has proposed in the local competition proceeding, CC Docket 96-98.[47]

Accounting Safeguards. In Computer Inquiry III, the Commission determined that its joint costing (Part 64) and asset transfer (Part 32) rules, together with its new price cap rules, constituted an effective barrier to anticompetitive cross-subsidies in the enhanced services industry. BOC Safeguards Order, 6 FCC Rcd at 7595-96, ¶¶ 54-55. There is no reason why those same rules should not prove equally effective for the payphone industry too.

The Commission has indicated that it will consider its accounting safeguards in a separate proceeding. NPRM ¶ 66. The Coalition sees no need for such a separate proceeding. The Commission's accounting safeguards have proven themselves effective over time, as applied to both CPE and enhanced services, and there is no reason to believe that they would not be equally effective here. Certainly, there is no reason to slow the transition of payphones into non-regulated services based on the pendency of such a proceeding. Indeed, there is every reason not to slow that transition. Congress required the Commission to complete all the payphone rulemaking issues by November 8th; it did not permit the Commission to carve out certain items

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[47]The Coalition sees no reason why the network information disclosure requirements proposed in the proceeding dealing with implementation of the local competition provisions of the telecommunications act, CC Docket 96-98, FCC 96-182, should apply here. Congress specified that Computer III was sufficient, and there can be no showing that Congress's estimation was wrong.

and deal with them in a separate proceeding on a more extended schedule. Moreover, the RBOCs are making critical decisions as to the form of their payphone businesses, and they cannot sensibly do so unless there is finality in this proceeding.

The Commission's Computer III accounting safeguards are more than adequate to protect against improper cross-subsidization. Under Part 64 all joint costs must be fully allocated between regulated and unregulated operations to ensure that each bears not just the costs directly attributable to it, but also its share of general overhead costs.[48] In parallel fashion, Part 32 regulates transactions between regulated and unregulated affiliates. See 47 C.F.R. § 32.27(d).

These rules are not paper tigers. The RBOCs have been required to file detailed cost accounting manuals that establish procedures for assigning costs;[49] they are required to employ independent auditors to review their books and attest that both their accounting methodologies and cost allocations conform with FCC requirements;[50] and the FCC can use its own auditors to detect inappropriately priced transfers. Bell Operating Co. Safeguards, 6 FCC Rcd at 7593, 7595, ¶¶ 50, 54. Based on these features and its own thorough review of the Commission's cost-accounting rules, Arthur Andersen has concluded that the rules prevent cross-subsidies by ensuring that any benefits of the transaction flow from competitive activities to regulated ones, rather than vice versa. Andersen Report at 13-16. The Commission, the courts, and the political branches likewise have concluded that these accounting safeguards effectively preclude cross-

[48]See 47 C.F.R. § 64.901(b)(2).

[49]See Bell Operating Company Safeguards, 6 FCC Rcd at 7591-93 ¶¶ 46-50; see Joint Cost Order, 2 FCC Rcd at 1318-19, ¶¶ 160-166 (general principles for cost allocation); id. at 1326-28 (cost allocation manuals); 47 C.F.R. Part 32 (1992) (Uniform System of Accounts).

[50]Bell Operating Company Safeguards, 6 FCC Rcd at 7593, ¶ 50; see Joint Cost Order, 2 FCC Rcd at 1329-33, ¶¶ 243-274.

subsidies.[51] Finally, the Commission's imposition of a price cap regime substantially reduces if not eliminates any incentive to engage in anticompetitive cross-subsidization.[52]

Structural Separation is Not Required. The Coalition agrees with the Commission's tentative conclusion not to require a separate subsidiary. NPRM ¶ 44. Any such requirement would be directly contrary to the plain language of Section 276. Section 276(b)(1)(C) requires the Commission to "prescribe a set of nonstructural safeguards" to prevent discrimination and cross-subsidy. Nowhere in Section 276 does Congress give the Commission the alternative of

[51]The Commission, for example, was "convinced" of their efficacy nearly half a decade ago, Bell Operating Companies Safeguards, 6 FCC Rcd at 7595, ¶ 54, and nothing to undermine the Commission's confidence has arisen since. The Court of Appeals for the D.C. Circuit has upheld these rules as "reasonably designed to prevent systematic abuse of ratepayers." Southwestern Bell Corp. v. FCC, 896 F.2d 1378, 1379 (D.C. Cir. 1990). And the Department of Justice likewise has concluded that current FCC cost allocation rules "alleviate the concern that the [Bell Companies] will engage in anticompetitive cross-subsidization of unregulated activities with ratepayer revenues." The AT&T Consent Decree's Manufacturing Restriction: Hearing Before the Senate Subcomm. on Antitrust, Monopolies and Business Rights, 102d Cong., 1st Sess. 544 (1991) (statement of James F. Rill, then Assistant Attorney General for Antitrust); see also National Telecommunications and Information Admin., U.S. Dep't of Commerce, The NTIA Infrastructure Report: Telecommunications in the Age of Information 233 (Oct. 1991) (FCC rules are "extensive and effective in controlling cross subsidy.").

[52]As the D.C. Circuit has explained, under price caps there is no "reward for shifting costs from unregulated activities into regulated ones, for the higher costs will not produce higher legal ceiling prices." National Rural Telecom Ass'n, 988 F.2d at 178; see Information Services Appeal, 993 F.2d at 1580 (shift to price caps "reduces any BOC's ability to shift costs from unregulated to regulated activities"). The Commission too has agreed with this conclusion. See Report and Order and Second Further Notice of Proposed Rulemaking Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, 2924 ¶ 104 (1989) (price-cap regulation "substantially curtails the economic incentive to engage in cross-subsidization"); FCC Tel. Price Caps: Hearing Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce, 101st Cong., 2d Sess. at 12 (1990) (Statement of former FCC Chairman Alfred Sikes) (price cap regulations leave regulated firms with "virtually no ability to pass along cost increases that are within their control" and drastically reduce the concerns about cost-shifting); BOC Safeguard Order, 6 FCC Rcd at 7596, ¶ 55 (price cap "severs the direct link between regulated costs and prices" thereby "reduc[ing] the incentive for the BOCs to shift nonregulated costs to regulated services").

requiring structural separation safeguards together with or instead of the nonstructural safeguards mandated by the Act.[53] Moreover, requiring structural separation would preclude those RBOCs that can operate more efficiently on an integrated basis from doing so, undermining their competitiveness and damaging consumer welfare. SPR Report at 24-25.[54]

In addition, any state requirement mandating or prohibiting structural separation of intrastate payphone services would be inconsistent with such Commission regulations and therefore must be preempted. See 47 U.S.C. § 276(c) ("To the extent any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt the State requirements."). The Commission therefore should require state consistency with its decision in this area, as it has many times in the past.

IV. THE COMMISSION SHOULD ADOPT A REASONABLE AND BALANCED APPROACH TO CARRIER SELECTION

Section 276 provides a balanced approach to carrier selection by RBOC and non-RBOC PSPs. RBOC PSPs are to be given the right, subject to the terms of any agreement with the location provider, to choose the interLATA carrier. Non-RBOC PSPs are to be given the right, subject to the terms of any agreement with the location provider, to choose the intraLATA

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[53]Indeed, Section 265 of the Senate version of the Telecommunications Act expressly authorized the Commission to determine whether to require Bell operating companies "to provide payphone service . . . through a separate subsidiary . . . ." S. 652, 104th Cong., 1st Sess., § 265(c) (1995). This, however, was dropped in favor of the House version, which contained no such authorization. See S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 159 (1996) ("The conference agreement adopts the House provision . . . .").

[54]The nonstructural safeguards of Computer Inquiry III are more than sufficient to ensure that the RBOCs will not subsidize or discriminate in favor of their payphone operations, and requiring structural separation could introduce unnecessary inefficiencies. RBOCs should be permitted to structure their operations as business needs dictate, and not be required to separate payphone operations structurally where it would not be efficient to do so. Bell Operating Companies Safeguards Order, 6 FCC Rcd at 7617, ¶¶ 98-100.

carrier. The Commission should, as the statute intends, recognize both these rights at the same time.

A. RBOCs' Ability to Negotiate with InterLATA Carriers. [NPRM ¶¶ 67-72]

It is in the public interest to permit RBOC PSPs to negotiate with, and select, the IXC serving their payphones. Such a right need not await general RBOC in-region relief pursuant to Section 271. Rather, Section 276(b)(1)(D) contemplates an immediate ability to bundle interLATA service with payphone services -- much in the same way Section 271(g)(4) contemplates an immediate ability to bundle interLATA service with database services and Section 271(g)(3) contemplates an immediate ability to bundle interLATA service with wireless service.[55]

The ability to select the IXC is critical to establishing market parity and increasing competition between RBOC and non-RBOC PSPs. Before the enactment of Section 276(b)(1)(D), RBOC PSPs labored under an extreme handicap that significantly lessened competition and therefore harmed the public interest. Many requests for proposals require selection of a single prime contractor who arranges for equipment, local service, and toll service. Because the RBOCs were barred from offering interLATA service, they were unable even to bid on the many contracts where such one-stop shopping was a requirement.

Even for other, smaller contracts, the interexchange restriction has hampered competition. Independent providers can aggregate their interLATA and intraLATA traffic from multiple

[55]An RBOC PSP would obviously have to choose an unaffiliated IXC to provide the interLATA service in-region unless and until the RBOC itself obtains in-region interLATA relief pursuant to Section 271.